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HIGH COURT OF DELHI AT NEW DELHI

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RSA No.56/2015

Date of Decision : 01.05.2015

SURINDER NARANG & ANR.

..... Appellant

Through: Mr. Rakesh Tiku, Sr.Adv. with
Mr.Amit Sharma and Mr.Sandeep
Kumar, Advs.

Versus

SMT.MADHU RANI

..... Respondent

Through: Mr.Yeeshu Jain and Mr.Abhinav
Tyagi, Advs.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellant against the judgment dated 23.12.2014 passed by the first appellate court in RCA No.25/2012.

2. Before dealing with the question of law urged by the learned senior counsel for the appellant, it would be pertinent here to give a brief background of the case. The respondent herein is the mother of the appellant No.1 and mother in law of the appellant No.2.

3. The respondent filed a suit for possession, permanent injunction and mesne profit/damages against the appellants herein in the month of October, 1988. The case which was set up by her was that she was the owner of property bearing No.A-72, Yojna Vihar, Delhi – 110092 measuring 271.05 square yards. The property was purchased from one Sh.M.K.Premi s/o Sh.V.S.Premi for a valuable sale consideration on 23.01.1995. Appellant No.1/Defendant No.1 being the son was living with the respondent/plaintiff. After he got married in the year 1996, he was permitted to occupy one room, attached toilet, bath room of the aforesaid property which was particularly shown in the plan attached to the suit. It was alleged that the expiry of four months from the date of marriage, the appellant No.2 started picking up quarrels with the respondent/wife for no rhyme or reason and the appellant No.1 in connivance with appellant No.2 started threatening the respondent and her husband for being implicated in a false and frivolous criminal matter in case they did not accede to their illegal demand of giving them money for purchase of a new flat. The appellant No.2 was stated to be working in Delhi Police and was threatening both the respondent and her husband to be sent behind the bars by using her office of Delhi Police. For this

purpose, the appellant No.2 in connivance with appellant No.1 lodged some frivolous complaints against the respondent and her husband. Because of this bad behaviour, the respondent had got a notice inserted in a local newspaper Veer Arjun on 30.09.1997 severing all her relations with the appellants. Thereafter the present proceedings for retrieval of possession by terminating his licence dated 24.08.1998. It was also alleged that from 05.09.1998, the respondent was entitled to use and occupation charges at the rate of Rs. 2,000/- per month which the room in question would have fetched from letting out the same.

4. The appellants/defendants filed their joint written statement. Later on vide order dated 18.12.2007 an application under Order 6 Rule 17 CPC was allowed and the written statement was permitted to be amended by appellant No.1. It was alleged by the appellant No.1 in the written statement that his father Sh. J.C.Narang was running a tea stall at Darya Ganj, Delhi and after some time the said shop was closed and another business of sale/purchase, repair, retreating, etc. of tyre and tubes of different vehicles was started. It was alleged that the appellant No.1 was assisting his father in his business right from the age of 17 years and the appellant No.1 was later on directed to look after a shop at Shakarpur,

Vikas Marg, Delhi, which was being run by his father after he had shifted his business.

5. The appellant No.1 had also taken the plea that in 1963 the family lived in Gandhi Nagar and from where it shifted to Preet Vihar in 1978 and purchased House No.F-79. This house was also sold in 1994 and the present house A-72, Yojna Vihar, Delhi was purchased sometime in January, 1995 for a total sale consideration of Rs.30,50,000/-. It is alleged that value of said house is around Rs.1 crore. The respondent is stated to have read up to 5th class and she being a house wife all along she had no independent source of income and the property in question belonged to a Hindu Undivided Family of which Sh.J.C.Narang his father was the karta and he being the co-parcener was entitled to a share in the said property. It was also alleged by the appellant No.1 that the sale proceeds of the suit property were contributed from the business where he was running the help and, therefore, he had a share in the property and he should not be dispossessed from the said property.

6. This averment in the written statement by the appellant No.1/defendant No.1 was disputed in the rejoinder. However, it may be pertinent here to mention that curiously no counter claim was set up by

the appellant No.1 in written statement for declaration of the property being ancestral property. On the pleadings of the parties, the following issues were framed (issue No.8 was framed subsequently):

- “1) Whether plaintiff is owner of the suit property? OPP.
- 2) Whether defendants are licensee of the suit premises i.e. one room and one attached toilet bathroom in the suit premises? OPP.
- 3) Whether plaintiff is entitled for possession of the suit premises, as prayed? OPP.
- 4) Whether plaintiff is entitled for injunction as prayed? OPP.
- 5) Whether plaintiff is entitled for damages? If yes, at what rate and from which date? OPP.
- 6) Whether the suit has been valued properly for purposes of court fees and jurisdiction? OPD.
- 7) Relief.
- 8) Whether defendant has committed contempt of the order of the court dated 16.10.1998? OPP”

7. Out of these issues, issue Nos.1,2,3,4,5,6 and 8 which were essential issues with regard to the ownership of the suit property as well as the factum as to whether the respondent was a licensee or not or

whether any amount was contributed towards the purchase of the suit property from the business which was being run by the husband of the respondent were critically analyzed in the light of the evidence produced the parties.

8. Both the trial court as well as the Appellate Court rejected the plea of the appellant and held that appellant is not the owner of the property on the basis of agreement to sell receipt, GPA etc. which are Ex.PW-2/1 to PW-2/4. For this purpose Suraj Lamp's case was relied upon, but the appellant was ignoring the fact that not only these documents but a conveyance deed Ex.PW-1/1 was also proved by the respondent to show her title.

9. Alternate plea is taken on behalf of defendants that the property bearing No.A-72, Yojna Vihar, Delhi-110092 was purchased from money taken out from joint family income. Case has been set up that the defendant No.1 has been working for the family business since his childhood without any remuneration and mainly in shop situated at Shakarpur, Vikas Marg, Delhi. Several DWs were called in witness box to depose in support of this contention. It is also claimed that the suit property is matrimonial home of defendant No.2. It has been further

claimed that due to this reason the defendants are not mere licensees but they have got substantial right in the suit property.

10. This plea of property being ancestral was also not accepted by the two courts below. Thus, there was a concurrent finding returned by the two Courts that respondent is the owner of the property and the appellant being only a licensee whose licence has been terminated, has no right to continue in possession.

11. The appellant has felt aggrieved and has challenged the impugned order of the ADJ. The contention of the learned senior counsel for the appellant is that the learned trial court and Appellate Court has not appreciated the fact that the suit property was contributed to by the appellant No.1 from the funds of the business which he was carrying on with his father. In this regard, he has also drawn the attention of the court to the order dated 09.12.2015 passed by Sh.R.K.Yadav, learned ASJ Karkardooma Courts, Delhi in a bail application in respect of FIR No.573/2005 registered at police station Anand Vihar wherein Sh.J.C.Narang husband of the respondent/plaintiff has purported to have admitted the share of the appellant in the suit property, by showing his willingness to pay a sum of Rs.5 lakhs to the appellant. It is on the basis

of these observations, it has been contended that this aspect has not been given any credence today.

12. It may be pertinent here to mention that the judgment and the decree passed by the trial court has been upheld by the first appellate court vide impugned judgment and decree. The contention which has been raised by the learned senior counsel for the appellant has been dealt with at length by the first appellate court and has been negated. The same need not be reproduced here except that there is admittedly a conveyance deed Ex.PW-1/1 in favour of the respondent which is executed by DDA. That proves her title. The so-called admission of share is made by husband which cannot bind the registered owner of the property. Moreover, this offer at best is only made by the father to his ungrateful son, out of desperation that an ungrateful and disobedient son in connivance with his wife who happens to be in Delhi Police, might get them implicated in a criminal case. The appellant could have accepted the offer given to him. Having chosen not to accept the same, it does not cast any doubt on the title of the respondent. In any case, this is a question of fact and not of law.

13. The contention of the learned senior counsel that the suit was filed on basis of documents like agreement to sell, receipt, GPA etc. while as what has been proved is conveyance deed, Ex.PW-1/1 which could not have been done without the amendment of the plaint.

14. I do not accept this argument. If during the pendency of the suit, the respondent has perfected her title, the said evidence can be relied upon by her without formal amendment of the plaint as she has claimed to be the owner. This is evident from the conveyance deed Ex.PW1/1.

15. In addition to this, the trial court as well as the first appellate court has categorically noted that the appellant has not produced any evidence whatsoever with regard to the factum of having contributed towards the sale proceeds of the suit property. Even if it is assumed that he has been able to show any such contribution having been made, such a contribution cannot be taken cognizance of because the Benami Transactions (Prohibition) Act, 1988 says that the person in whose name the title document is registered, is the owner of the property.

16. The appellant has also admitted in the cross-examination that the property is registered in the name of the respondent.

17. In the light of the aforesaid concurrent finding of fact returned by the two courts below that the respondent/plaintiff is the owner of the property in whose name the conveyance deed is registered, this point cannot be re-agitated before this court as it is question of fact and not a question of law.

18. The learned senior counsel has not been able to show the question of law much less substantial question involved in the matter hence, the present appeal is dismissed.

V.K. SHALI, J

MAY 01, 2015/dm